

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ISABEL GARCIA,

Plaintiff,

vs.

Civ. No. 01-1208 MV/LCS

LEPRINO FOODS, CO., ALEX LOEZA, and
JUSTIN FOLKNER,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Objections to Defendant's Itemized and Verified Cost Bill, filed September 29, 2004, [**Doc. No. 118**]. Following a jury trial, judgment was entered in favor of Defendants on August 2, 2004. On September 2, 2004, Defendants filed an itemized and verified cost bill pursuant to Rule 54 of the Federal Rules of Civil Procedure and Local Rule 54. On September 22, 2004, having received no objections from Plaintiff, the Clerk of the Court taxed costs against Plaintiff. A week later, Plaintiff filed the instant objections to Defendants' cost bill.

Objections to Defendant's cost bill were due on September 16, 2004. *See* D.N.M.Lr-Civ. 7.6(a) (a response must be served within fourteen calendar days after service of the motion). While this time period can be extended by agreement of all parties, there is no evidence in the record that the parties agreed to an extension. *Id.* Plaintiff did not seek an extension from the Court. *Id.* In fact, it does not even appear from the papers submitted by Plaintiff that she is aware of the untimeliness of the motion and, thus, has offered no explanation for the late filing. Plaintiff's untimely objections were received after costs were already taxed and, therefore, cannot

be considered by the Clerk of the Court.

Rule 54, however, provides that “[o]n motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.” Fed.R.Civ.P. 54(d)(1) (emphasis added). Plaintiff’s objections were filed within five days after the Clerk taxed costs. The Court, therefore, will consider Plaintiff’s filing as seeking review under Rule 54. Defendants, however, will be given an opportunity to respond to Plaintiff’s objections prior to the Court ruling.

IT IS THEREFORE ORDERED that Defendants have ten days from the date of this Order to file a response to Plaintiff’s Objections to Defendant’s Itemized and Verified Cost Bill, filed September 29, 2004, [**Doc. No. 118**]. Plaintiff will then have five days to file a reply.

Dated this 7th day of December, 2004.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE

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